NOT TO BE PUBLISHED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

MELTON RAY CARTER,

Plaintiff,

vs.

WOODBURY COUNTY JAIL, DAVID AMICK, and SGT. McCORMICK,

Defendants.

No. C01-4056-PAZ

MEMORANDUM OPINION AND ORDER ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

This matter is before the court on the motion for summary judgment (Doc. No. 28) filed by the defendants on January 7, 2003. The defendants support their motion with a brief, statement of undisputed material facts, and appendix (Doc Nos. 29, 30 & 31, respectively). On January 27, 2003, the plaintiff filed a timely motion (Doc. No. 32) for an extension of time to respond to the motion for summary judgment. The court granted the motion, extending the response deadline to March 3, 2003 (Doc. No. 33). No resistance was filed by that date. On March 10, 2003, the court held a telephonic hearing on this case in which the response deadline was extended to March 17, 2003. Then on March 12, 2003, the plaintiff filed a motion for an extension of time, asking the court "to allow him to file his resistance to the motion for summary judgment by March 14, 2003." (Doc. No. 35) The motion attached a proposed Affidavit in support of resistance to the motion for summary judgment which the plaintiff's counsel indicated had been sent to the plaintiff for his review and signature. The court granted the motion (Doc. No. 36); however, no resistance was filed by March 14, 2003. On March 17, 2003, the plaintiff's counsel filed a Report to the Court memorializing his contacts with the plaintiff concerning the impending deadline. (Doc. No. 37)

Because the defendants' motion is unresisted, the court could grant the motion pursuant to Local Rule 7.1(f). Nevertheless, the court will discuss the case briefly to provide a complete record.

I. FACTUAL BACKGROUND

The plaintiff Melton Carter ("Carter") brings this action under 18 U.S.C. § 1983, alleging the defendants violated his constitutional rights while he was confined in the Woodbury County Jail, Sioux City, Iowa. Carter claims he was incarcerated in the jail from July 5, 2000, until December 18, 2000. He claims he spent his entire period of confinement in a holding cell, without "apparent good cause." He states that upon his arrest, he was taken to Mercy Hospital for unspecified treatment. He claims that when he was returned to the jail, he spent two days at the nurse's station, and then was taken to a holding cell where he remained until his release. Carter states he was told he was being kept in the holding cell "for medical reasons." (Doc. No. 8)

Carter also claims the defendants refused to allow him "any religious worship[ ] and . . . to go to church." (Doc. No. 1) He states he filled out a form to ask to go to church on several occasions, and each time his request was denied. Carter alleges Defendant McCormick assured him repeatedly that he would be allowed to go to church the next week, but the promise was never kept. (Doc. No. 8)

Carter claims he was not allowed any type of exercise, not allowed to take a shower, his "visiting list[] was taken away, and he was not given supplies to clean his cell. (Doc. Nos. 1 & 8) He also claims official mail sent to him from this court was "tampered with and torn." (Doc. No. 1)

Carter complains that he asked Sgt. McCormick for a grievance form and was told there were either no forms or no grievance procedure available to him. (Doc. Nos. 1 & 8)

He asked to speak with someone in authority at the jail about his complaints, and his request was denied. (Doc. No. 1)

For these alleged violations of his constitutional rights, Carter seeks compensatory damages in the amount of $300,000, and asks the court "to order for better inmate treatment and to inforce [sic] a grievance procedure." (*Id.*)[1]

The defendants generally deny each of Carter's claims. (Doc. No. 10) They state Carter was incarcerated in the jail from July 26, 2000, to August 31, 2000, and from October 1, 2000, to December 18, 2000. (Affidavit of Lynette Redden, Jail Administrator, Doc. No. 31, p. 6, ¶ 6) In their pretrial narrative statement, the defendants claim that while he was incarcerated in the jail, Carter "was assigned to a number of different cells for a number of different reasons." (Doc. No. 13, ¶ 2(d)) They explain that the jail maintains a grievance procedure for use by inmates, and the procedure is described in a rule book that is given to each inmate. (*Id.*, p. 5, ¶ 4) Carter acknowledged, by his signature on an Inmate Supply Sheet, that he received a copy of the rule book on July 27, 2000, and October 2, 2000. (Doc. No. 31, pp. 8 & 9) Carter did not file any grievances during his period of incarceration in the jail. (Doc. No. 31, p. 6, ¶ 10)

II. STANDARDS FOR SUMMARY JUDGMENT

Rule 56 of the Federal Rules of Civil Procedure governs motions for summary judgment and provides that either party to a lawsuit may move for summary judgment without the need for supporting affidavits. Fed. R. Civ. P. 56(a) & (b). Rule 56 further states that summary judgment

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[1]Carter also apparently alleges his weight declined from 175 pounds to 125 pounds while he was confined in the holding cell, and this weight loss "was a direct and proximate result of being placed in the holding cell as guards would spill my food on the floor and expect me to eat it." (*See* proposed Affidavit attached to Doc. No. 35, at ¶ 6) Because this allegation does not appear anywhere in Carter's complaint or amendment to the complaint, the court declines to consider it and denies relief based on this claim.

> shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Fed. R. Civ. P. 56(c). "A court considering a motion for summary judgment must view all the facts in the light most favorable to the nonmoving party, . . . and give [the nonmoving party] the benefit of all reasonable inferences that can be drawn from the facts." *Lockhart v. Cedar Rapids Comm. Sch. Dist.*, 963 F. Supp. 805, 814 (N.D. Iowa 1997) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986)).

The party seeking summary judgment must "'inform[ ] the district court of the basis for [the] motion and identify[ ] those portions of the record which show lack of a genuine issue.'" *Lockhart*, 963 F. Supp. at 814 (quoting *Hartnagel v. Norman*, 953 F.2d 394, 395 (8th Cir. 1992)); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2552-53, 91 L. Ed. 2d 265 (1986). A genuine issue of material fact is one with a real basis in the record. *Lockhart*, 963 F. Supp. at 814 n.3 (citing *Matsushita*, 475 U.S. at 586-87, 106 S. Ct. at 1355-56). Once the moving party has met its initial burden under Rule 56 of showing there is no genuine issue of material fact, the nonmoving party, "by affidavits or as otherwise provided in [Rule 56],[2] must set forth specific facts showing that there is a genuine issue for trial." Rule 56(e); *Lockhart*, 963 F. Supp. at 814 (citing *Matsushita*, 475 U.S. at 586, 106 S. Ct. at 1356).

Addressing the quantum of proof necessary to successfully oppose a motion for summary judgment, the United States Supreme Court has explained the nonmoving party must produce sufficient evidence to permit "'a reasonable jury [to] return a verdict for the

[2] *I.e.*, by "affidavits . . . supplemented or opposed by depositions, answers to interrogatories, or further affidavits." Fed. R. Civ. P. 56(e).

nonmoving party.'" *Lockhart*, 963 F. Supp. at 815 (quoting *Anderson v. Liberty Lobby*, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986)). Furthermore, the Court has held the trial court must dispose of claims unsupported by fact and determine whether a genuine issue exists for trial, rather than "weigh the evidence and determine the truth of the matter." *Lockhart*, 963 F. Supp. at 815 (citing *Anderson*, 477 U.S. at 249, 106 S. Ct. at 2510-11; *Celotex*, 477 U.S. at 323-24, 106 S. Ct. at 2552-53; *Matsushita*, 475 U.S. at 586-87, 106 S. Ct. at 1355-56).

The Eighth Circuit recognizes "summary judgment is a drastic remedy and must be exercised with extreme care to prevent taking genuine issues of fact away from juries." *Wabun-Inini v. Sessions*, 900 F.2d 1234, 1238 (8th Cir. 1990) (*citing* Fed. R. Civ. P. 56(c)). The Eighth Circuit, however, also follows the principle that "summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" *Id.* (quoting *Celotex*, 477 U.S. at 327); *Hartnagel v. Norman*, 953 F.2d 394, 396 (8th Cir. 1992).

Thus, the trial court must assess whether a nonmovant's response would be sufficient to carry the burden of proof at trial. *Hartnagel*, 953 F.2d at 396 (citing *Celotex*, 477 U.S. at 322). If the nonmoving party fails to make a sufficient showing of an essential element of a claim with respect to which it has the burden of proof, then the moving party is "entitled to judgment as a matter of law." *Celotex*, 477 U.S. at 323; *Woodsmith*, 904 F.2d at 1247. However, if the court can conclude that a reasonable jury could return a verdict for the nonmovant, then summary judgment should not be granted. *Anderson*, 477 U.S. at 248; *Burk*, 948 F.2d at 492; *Woodsmith*, 904 F.2d at 1247.

The court will apply these standards to the defendants' motion for summary judgment.

III. LEGAL ANALYSIS

A. Overview of Civil Rights Claims Under 42 U.S.C. § 1983

Title 42 U.S.C. § 1983 provides, in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Section 1983 was designed to provide a "broad remedy for violations of federally protected civil rights." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 685, 98 S. Ct. 2018, 2033, 56 L. Ed. 2d 611 (1978). However, section 1983 provides no substantive rights. *Albright v. Oliver*, 510 U.S. 266, 271, 114 S. Ct. 807, 811, 127 L. Ed. 2d 114 (1994); *Graham v. Conner*, 490 U.S. 386, 393-94, 109 S. Ct. 1865, 1870, 104 L. Ed. 2d 443 (1989); *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 617, 99 S. Ct. 1905, 1916, 60 L. Ed. 2d 508 (1979). "One cannot go into court and claim a 'violation of § 1983' — for § 1983 by itself does not protect anyone against anything." *Chapman*, 441 U.S. at 617, 99 S. Ct. at 1916. Rather, section 1983 provides a remedy for violations of all "rights, privileges, or immunities secured by the Constitution and laws [of the United States]." 42 U.S.C. § 1983; *see Albright*, 510 U.S. at 271, 114 S. Ct. at 811 (section 1983 "merely provides a method for vindicating federal rights elsewhere conferred"); *Graham*, 490 U.S. at 393-94, 109 S. Ct. at 1870 (same); *Maine v. Thiboutot*, 448 U.S. 1, 4, 100 S. Ct. 2502, 2504, 65 L. Ed. 2d 555 (1980) ("Constitution and laws" means section 1983 provides remedies for violations of rights created by federal statute, as well as those created by the Constitution).

To state a claim under 42 U.S.C. § 1983, Carter must establish two essential elements: (1) the violation of a right secured by the Constitution or laws of the United

States, and (2) the alleged deprivation of that right that was committed by a person acting under color of state law. *See West v. Atkins*, 487 U.S. 42, 48, 108 S. Ct. 2250, 2254-55, 101 L. Ed. 2d 40 (1988); *Parratt v. Taylor*, 451 U.S. 527, 535, 101 S. Ct. 1908, 1913, 68 L. Ed. 2d 420 (1981), *overruled on other grounds by Daniels v. Williams*, 474 U.S. 327, 330, 106 S. Ct. 662, 664, 88 L. Ed. 2d 662 (1986).

B. Exhaustion Requirements Under 42 U.S.C. § 1997e

Title 42 U.S.C. § 1997e, as amended by the Prison Litigation Reform Act of 1996 ("PLRA") provides, in relevant part:

> No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

Pub. L. 104-134, § 101, 110 Stat. 1321 (1996). The PLRA "amendments to 42 U.S.C. § 1997e(a), mandate exhaustion of available administrative remedies before an inmate files suit." *Jones v. Norris*, 310 F.3d 610, 612 (8th Cir. 2002) (citing *Booth v. Churner*, 532 U.S. 731, 738-39, 121 S. Ct. 1819, 149 L. Ed. 2d 958 (2001)).

A civil action "with respect to prison conditions" is defined as "any civil proceeding arising under federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison. . . ." 42 U.S.C. § 3626(g)(2). All of Carter's claims relate to "the conditions of confinement," and therefore would be subject to the PLRA's exhaustion requirement. As the defendants noted in their brief, the United States Supreme Court has explained, "[T]he PLRA's exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other

wrong." *Porter v. Nussle*, 534 U.S. 516, 532, 122 S. Ct. 983, 992, 152 L. Ed. 2d 12, 26 (2002) (quoted in Doc. No. 29 at 3).

In the present case, Carter failed to pursue any administrative remedies. He claims he requested a grievance form, but was told either that no forms were available or that no grievance procedure existed. The record indicates otherwise. Carter signed forms on two separate occasions indicating he had received a copy of the jail's rule book that explains the grievance procedure. Inmates are instructed to "forward to the Correctional Officer on duty, in writing, a full explanation of the grievance." (Doc. No. 31, p. 10) The procedure does not contain a requirement that a grievance be submitted on any particular form. (*See id.*)

Administrator Redden explains, "All inmates are provided with paper and pen so that they can submit written complaints, write letters, request medical attention and communicate in writing whenever they wish." (*Id.*, p. 6, ¶ 11) Carter evidently had paper and pen because he claims he repeatedly submitted a form requesting that he be allowed to go to church.

In sum, Carter has failed to meet his burden under 42 U.S.C. § 1997e, to show he properly exhausted the available administrative remedies before bringing this suit in federal court. *See McAlphin v. Morgan*, 216 F.3d 680, 682 (8th Cir. 2000) (affirming dismissal without prejudice of section 1983 complaint in which plaintiff failed to allege full exhaustion of administrative remedies or to attach copies of available administrative dispositions, citing *Brown v. Toombs*, 139 F.3d 1102, 1104 (6th Cir. 1998) (*per curiam*); *Rivers-Frison v. Southeast Missouri Comm. Treatment Ctr.*, 133 F.3d 616, 619 n.2 (8th Cir. 1998) (plaintiff must place a complete record before the court)).

Furthermore, the court finds this case should be dismissed as frivolous under 42 U.S.C. § 1997e(c), because Carter's claims lack an arguable basis in either law or fact.

See Nietzke v. Williams, 490 U.S. 319, 325, 109 S. Ct. 1827, 1831-32, 104 L. Ed. 2d 338 (1989). Carter has provided no evidence or affidavits to support his claims.

IV. CONCLUSION

Because Carter failed to resist the defendants' motion for summary judgment, failed to exhaust his administrative remedies, and his complaint is frivolous, the defendants' motion for summary judgment is **granted**. Judgment shall enter in favor of the defendants and against Carter. Accordingly, the final pretrial conference scheduled for Friday, March 21, 2003, and the jury trial scheduled for Thursday, March 27, 2003, are **stricken** from the docket.

IT IS SO ORDERED.

DATED this 18th day of March, 2003.

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PAUL A. ZOSS
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT